IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Mst Abdia Vs. State of Rajasthan

S.B.CR. MISC. BAIL APPLICATION NO.5248/2007

DATE OF ORDER :: November 16, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Ramesh Purohit, for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and the police investigation diary.

It is contended by learned counsel for the petitioner that the deceased was suffering from second stage of Tuberculosis. She was got treated by petitioner and her other family members, however, she died because of serious ailment of second stage of Tuberculosis. Learned counsel for the petitioner submits that

after investigation, the police did not find case against the petitioner and co-accused for the offence under section 498-A and 304-B I.P.C. and filed the negative final report. However, subsequently, the police again investigated the matter and found the case against petitioner and co-accused Imran under section 304-B I.P.C.

It is further contended by learned counsel for the petitioner that from the post mortem report, no definite cause of death has been opined by Medical Board comprising of three Doctors. It is further contended that even in FSL Report, there is no positive sign of administering the poisonous substance to the deceased.

Learned Public Prosecutor submits that initially the dead body was examined by the Medical Board comprising of three Doctors, who conducted the post mortem, which, they did not find exact cause of death. However, the viscera was sent for FSL and the FSL Report dt.21.9.2006 also did not indicate the positive test of administering metalic poisons, ethyl and methyl alcohol cyanide, alkaloids, barbiturates, tranquillizers and insecticides. Thus, there is no positive test of administering the poisonous substance in view of the FSL Report.

I have gone through the statements of the Doctors, who

were the Members of Medical Board. Almost all the Doctors were of the opinion that cause of death is not by pressing the mouth or strangulation . The possibility cannot be ruled out that deceased died because she was suffering from second stage of Tuberculosis and may be by heavy doze of medicine. At any rate, the death of deceased is neither homicidal nor suicidal. There appears to be no other material connecting the petitioner with the commission of the offence under section 304-B I.P.C. There had been statements of various Doctors and latest report given by the Medical Board comprising three Doctors on 27.8.2007, which is as under:

> "मृतका मदीना के पूर्व में T.B की बीमारी होना बताया गया है जिससे वह पूर्ण रूपेण ठीक हो गयी थी ऐसे मरीजों में अचानक फेफड़ों में रक्त स्त्राव, pulmonary embolism, pulmonary hypertension व Heart में concleution defuse .व गति की विसंगतिया होने की सम्भावना से इन्कार नहीं किया जा सकता व ये सभी अचानक मृत्यु का कारण हो सकते हैं।"

Thus, the Doctors concurrently opined that possibility cannot be ruled out that the deceased died because she was suffering from pulmonary embolism, pulmonary hypertension.

Be that as it may, without commenting on the merit of the

case, having regard to the facts and circumstances of the case and looking to the material available on the police investigation diary, I consider it just and proper to grant anticipatory bail to the petitioner.

Accordingly, the bail application filed by petitioner under section 438 Cr.P.C. is allowed and it is directed that in the event of arrest of petitioner Mst Abida w/o Farook in FIR No. 108/2006, Police Station, Sujangarh, Distt. Churu, she shall be released on bail for a period till the police concludes the investigation and files the challan provided she furnishes a personal bond in the sum of Rs.10,000/- along with one surety of like amount to the satisfaction of Investigating Officer to surrender and appear before the trial court on the date of filing of the challan after conclusion of the investigation on the following conditions:-

(i)That she shall make herself available for interrogation by a police officer as and when required;

(ii)That she shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer and;

(iii)That she shall not leave India without the previous permission of the Court.

The petitioner shall surrender before the trial court on the

date of filing of the challan.

(H.R.PANWAR),J.

m.asif/-